

ARTICLE APPEARED

A-36

WASHINGTON POST
26 December 1984

Time's Lawyers Seem Confident

Issue Is Whether Sharon Met Stiff Test for Proving Libel

By Herbert H. Denton
Washington Post Staff Writer

NEW YORK—The harshest inference one might draw from the evidence in Ariel Sharon's libel case against Time Inc., Judge Abraham D. Sofaer said stinging last week, is that David Halevy, the magazine's Jerusalem correspondent, made up the paragraph of the article at issue in the \$50 million suit.

"Nobody knows except Halevy, nobody in the world, presumably, except Halevy and—if what he is saying is true—his sources," Sofaer said out of the jury's presence.

Time lawyers exuded confidence, however, that the jury will find that the former Israeli defense minister

NEWS ANALYSIS

failed in the six-week trial to meet the stiff standard for proving libel of a public figure. They appeared so confident that they rested their case Thursday without calling any witnesses and went shopping.

Aside from his own testimony, Sharon relied on Halevy and his Time superiors, called as "hostile witnesses," to argue his case. The result was hardly journalism's proudest moment as testimony detailed the process by which the magazine with a worldwide circulation of 6 million and an annual editorial budget of \$50 million produced a provocative paragraph in a major cover story Feb. 21, 1983.

The argument in court was not so much whether Time adhered to the trade's highest standards or even its own elaborate system for checking the facts but whether Sharon has proven libel.

Sharon contends that Time libeled him in an article about the Israeli commission report on massacres in 1982 of Palestinians in two Beirut refugee camps by Christian Phalangist militia. The panel found that Sharon bore "indirect responsibility" for the massacres.

Time's controversial paragraph said a secret appendix to the report

found that, the day before the massacres began, Sharon discussed in conversations with Phalangist leaders a need to avenge the assassination of their leader, Lebanese president-elect Bashir Gemayel.

Time lawyers have said that, if the jury finds the report false in detail, defamatory to Sharon and written in reckless disregard for its accuracy, they are prepared to argue in a second phase of the trial that it is substantially true. That could reap a technical victory in which Time would not have to pay damages.

Final arguments are scheduled after the New Year. Meanwhile, rumors abound that Time will quietly settle with a published apology and payment of Sharon's legal fees.

The Israeli Cabinet could dispel fog surrounding the trial by consenting Sunday to Time's request that a Time representative inspect the secret appendix. But few expect the zealously security-conscious Israelis to do so.

There seems little likelihood that it will be known soon whether Halevy was correct in reporting that the Kahan Commission classified and stored damaging papers showing Sharon's foreknowledge and acquiescence in the killings of hundreds of men, women and children at the camps.

Hiding the identity of his sources for the story by invoking New York state's reporters shield law, Halevy, an Israeli citizen, testified that he reached his conclusion by combining hard informational leads, a cryptic hint and his own speculation—"my analysis," he called it.

Although two other of his very detailed Time reports had been proven partially incorrect when further checking found them unsupported, none of his Time superiors questioned him closely about his sources for the Sharon item or, even now, knows who they are.

"That is not my job," Time Managing Editor Ray Cave testified. "We probably have as good or better a staff, a method, and spend more money on checking the facts we put into print than any major publication in the world."

Richard Duncan, the magazine's chief of correspondents, said he relied on assurances from Time's Jerusalem bureau chief, Harry Kelly, that Halevy's information was solid. Kelly testified that he had no way of corroborating the dispatch.

In striking down Time motions to dismiss the case without sending it to the jury, Sofaer told Time lawyers, "It seems to me that you, too, may be assuming that there had to be a source."

"If the law had to assume the way apparently everyone above Mr. Halevy at Time magazine assumed, or felt he had to assume, that he had sources, there would be no issue to discuss in libel cases."

"People would just simply write what they wanted to write, saying that they were written as a result of contact with confidential sources and there would be nothing further to talk about," Sofaer said.

Halevy's background and his confidential sources in Israel's military and intelligence establishment had produced other exclusives, his Time superiors testified.

Duncan marveled about how fast Halevy, reporting from Israel, had unearthed details being withheld

four years ago in Washington concerning President Jimmy Carter's aborted "Desert One" operation to free U.S. hostages in Iran.

Halevy's other firsts on stories were duly noted in the "publisher's letter" in the front of the magazine.

But Duncan was forced by Sharon's lawyers to admit that he had

Continued

several problems with Halevy, including the correspondent's breach of everyday work rules, his active involvement in political opposition to Sharon while working for Time and his detailed account in 1979 of the purported dire prognosis of a secret medical team Halevy said had examined then-prime minister Menachem Begin.

After Begin, Sharon's strong ally and patron, called Time's report about his health untrue, a Time internal investigation found no substantial evidence to support the report, and what editors described in testimony as a "partial retraction" was published.

Halevy was placed on one-year probationary status. In their testimony, Time editors sought to emphasize that this disciplinary action was not formal or included in the lexicon of Time work rules.

Sofaer indicated that he might not necessarily connect that incident with Halevy's avowed political views against Sharon and with Sharon's allegation of libel. But, the judge said, a jury might.

Noting stories in which Halevy made a "mistake" had a "political slant," Sofaer said, "the theory would be presumably that when he wrote stories that were anti-Begin, that is when he made things up."